

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **VICE CHAIRMAN ROYAL JOHNSON**, on April 9, 2001
at 1:30 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Tom Zook (R)

Members Excused: Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Marion Mood, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 640
HB 474

EXECUTIVE ACTION ON HB 640

Todd Everts announced that there were two sets of amendments,
requested by the sponsor, **SPEAKER DAN MCGEE**. The first,
Amendment #HB064005.agp, **EXHIBIT(ens80a01)**, eliminated general
obligation bonds and inserted "economic development bonds". It

also made the interest rates on the loans coming from these bonds commensurate with the interest rates on the bonds themselves, and it took out the sections on corporate income tax and license taxes.

SEN. TOM ZOOK asked how this would affect the fiscal note. While **Mr. Everts** was looking this up, **SEN. MIKE HALLIGAN** commented that he did not see an amendment that would take out the business income tax incentive portion. **Mr. Everts** affirmed that sections (10) and (11) were amended out of the bill with item#15. **Mr. Everts** came back to the fiscal note and said that on Table 1, Summary of Revenue Impacts, it gave a negative of close to \$3.4 million under electrical energy license tax.

SEN. HALLIGAN wondered if the combination of \$400 million and \$500 million was still in the bill, with regards to the bonding issue. **Mr. Everts** confirmed this, saying the amendment merely changed the type of bonds, from a general obligation bond which incurs state debt to an economic development bond which is tied to the revenues of the facilities. **SEN. HALLIGAN** surmised that there would be no full faith in credit of the state now. **Mr. Everts** pointed to Section (20) on page 17 was now stricken.

SEN. ROYAL JOHNSON asked if there was a ten year moratorium on property tax. **Mr. Everts** replied that the moratorium was for a tax period to be specified by the PSC. **SEN. JOHNSON** wondered if the committee could extend to the PSC the right to exempt property or corporate license tax. **Mr. Everts** affirmed it could be done statutorily. **SEN. JOHNSON** followed up by asking if this could be done without a floor or ceiling. **Mr. Everts** stated it would be limited to the duration of the tax exemption. **SEN. TOM ZOOK** felt that this could have an impact on the counties. **Mr. Everts** confirmed this, explaining that this tax exemption did not have the impact fee mechanism.

SEN. JOHNSON wondered if the exemption could be extended to 30 years if that was the life of the company. **Mr. Everts** said this could be done.

SEN. JOHNSON requested that **REP. DAN MCGEE** close on HB 640 since he did not have the opportunity when he presented the bill. There was no objection from the committee.

Closing by Sponsor:

REP. DAN MCGEE, HD 21, LAUREL, stated that the purpose of HB 640 was to provide incentives for generation construction in the state, and service to Montana citizens and businesses. These

incentives could be bonding, or tax holidays to encourage more generation in the state as well as entice existing facilities to serve Montanans at just and reasonable rates. The tax provisions contained in the bill were a type of penalty for non-compliance, and he admitted they were steep. He believed that there was an obligation to the citizens of Montana to assure them of a stable supply of electricity at affordable rates. He was not certain that without this bill, there were the kinds of incentives in place that would encourage companies to locate here and develop energy sources and, if they did, if they would provide energy to Montanans cost-effectively. As an example of what he envisioned, he told how Ash Grove Cement Co. had the chance to sell all of their concrete to Denver for the construction of their new airport but did not because it would have impacted their Montana customers and the state as a whole, and they continued to sell their product here.

SEN. HALLIGAN asked at what point the economic development bonds were issued, saying he was not clear on Section (3), and if there was interplay with Section (5). **REP. MCGEE** replied the intent was to try and help a generating entity produce more electricity, and therefore allowed for the issuance of economic development bonds. **Mr. Everts** explained that it was a stand-alone section; if there were not 300 megawatts of power at 3 cents on or by the effective date of this bill, the Board of Investments would be given the authority to issue up to \$400 million in bonds for the purchase of power for large customers, or for the investment in an electric generation facility which would provide power to large customers. **SEN. HALLIGAN** wondered if the office of the energy director was still in the bill. **Mr. Everts** said it was but pointed to another set of amendments that dealt with that issue. **SEN. JOHNSON** asked if it had been eliminated, and **Mr. Everts** replied that the amendment modified it, and it might go into the economic development office in the governor's office if SB 445 passed.

SEN. ZOOK asked if Section (5) was still applicable, pointing to the perceived conflict between "shall" and "may" issue bonds. **Mr. Everts** replied that Section (5) said they shall make bonds available for loans at \$100 million a year for five years; in addition to that, the Board may be required to issue up to \$500 million in bonds. This meant that the total package would be \$900 in bonds, and \$500 million in loans. **SEN. ZOOK** ascertained that the bonds were economic development bonds, and not general obligation bonds. **Mr. Everts** said that they were.

Motion/Vote: **SEN. HALLIGAN** moved that **AMENDMENT #HB064005.AGP BE ADOPTED. Motion carried 7-0.**

Note: CHAIRMAN MACK COLE presided over the balance of the meeting.

CHAIRMAN COLE announced further amendments, and Mr. Everts explained #HB064004.agp, EXHIBIT (ens80a02), by saying that it amended the office of the energy director, attaching it to the PSC but if SB 445 passed, it would be attached to the governor's office of economic development; it also amended the director's salary. He went through the remainder of the items, among them the increase of the WET tax to 5.015 cents and a termination date of June 30, 2002.

Motion: SEN. HALLIGAN moved that AMENDMENT #HB064004.AGP BE ADOPTED.

Discussion:

SEN. JOHNSON asked if all utilities exporting power were included in the WET tax. Mr. Everts informed him that there were a number of exemptions, as described in subsection (3) on page 12.

SEN. HALLIGAN asked if the WET tax price difference was a result of going from kilowatt to megawatt. REP. MCGEE replied that the increase was still based on kilowatt. SEN. ZOOK wondered why it was changed. REP. MCGEE explained it was meant to be an incentive to provide Montana customers with power at affordable rates because it would not have to be paid if the requirements in the first three sections of the act were met; he also pointed to the termination date of June 30, 2002 which would bring it in line with a Supreme Court ruling. SEN. ZOOK asked if it was designed to generate more revenue. REP. MCGEE asserted it would if it was placed on the generator; if he sold to Montana customers, though, it would not be levied. SEN. ZOOK inquired why the sponsor did not use a higher figure, to create a bigger incentive. REP. MCGEE felt that 5 cents were sufficient.

SEN. DON RYAN wanted to know which companies producing energy in the state would end up paying the 5 cent tax. REP. MCGEE was not sure but thought all companies producing in state but not selling to Montana customers would.

SEN. HALLIGAN wondered where the revenue from this tax would go. Mr. Everts replied the explanation could be found on page 13, Section (15). SEN. HALLIGAN felt it might be better used to buy down rates and asked if it could be amended.

{Tape : 1; Side : B}

Mr. Everts suggested it could be amended to direct it to be provided for debt service on the bonds.

SEN. WALTER MCNUTT wanted to know if this WET tax applied to all generators in the state, what it would do to MDU. **Mr. Everts** reminded him of the exemptions in the bill, and thought MDU was subject to the tax.

SEN. ZOOK wondered if a 2/3 vote was still required, after changing the bonds from general obligation bonds. **Mr. Everts** explained that it did not because no state debt was incurred by changing the bonds to economic development bonds.

Vote: Motion that **AMENDMENT #HB064004.AGP** be adopted carried 6-0.

SEN. MCNUTT introduced a proposed amendment, **EXHIBIT (ens80a03)**, which would exempt MDU from the WET tax. **Mr. Everts** stated that the second amendment did exempt a utility as described under 69-8-210(4) of the restructuring act which would be MDU; the first amendment dealt with taxing a facility owned by MDU at a 6% rate unless they complied with the provisions set forth in HB 640; this, in essence, did not subject them to the incentive/disincentive property tax provision in the bill which might have put them in a class 14 tax rate.

SEN. HALLIGAN requested that these two amendments be voted on separately because item #2 raised some constitutional questions.

Motion/Vote: **SEN. COLE** moved that **ITEM #1 OF THE AMENDMENT BE ADOPTED**. Motion carried 6-0.

Motion: **SEN. COLE** moved that **ITEM #2 OF THE AMENDMENT BE ADOPTED**.

Discussion:

SEN. HALLIGAN charged that generators had to be treated equally to withstand constitutional scrutiny; he felt it would violate equal protection laws if they were treated differently, depending on whether they sold their power in state or out of state.

SEN. ZOOK asked where MDU generated electricity in state. **SEN. MCNUTT** told him their plant was near Sidney. He added that he strongly opposed MDU being subject to this tax because they were on a different power grid and had nothing to do with the reason for this bill. He asserted that if his proposed amendment did not pass and MDU would not be exempt, he could not vote for HB 640. **SEN. ZOOK** agreed, saying they were not a part of the problem.

Vote: Motion carried 4-2 with Halligan and Ryan voting no.

SEN. HALLIGAN wondered if the committee could get a grey bill.

Motion/Vote: **SEN. STAPLETON** moved that **HB 640 BE CONCURRED IN AS AMENDED**. Motion failed 1-6 with Stapleton voting aye, with **SENS. DOHERTY AND MCCARTHY** voting no by proxy.

EXECUTIVE ACTION ON HB 474

Todd Everts stated that two sets of amendments had been adopted, **EXHIBIT (ens80a04)**, #HB047401.ate, and **EXHIBIT (ens80a05)**, #HB047402.ate, and he had a new set which also handed out, **EXHIBIT (ens80a06)**, #HB047403.ate. He explained that Amendment #HB047403.ate stripped the windfall profits tax from the bill which made Amendment #HB047402.ate obsolete as well as item #4 on Amendment #HB047401.ate.

Motion: **SEN. MCNUTT** moved that **AMENDMENT #HB047403.ATE BE ADOPTED**.

Discussion:

SEN. ZOOK asked what was left of the bill since its most important provision was eliminated. **SEN. HALLIGAN** echoed his concern. **Mr. Everts** pointed to Sections (3) through (7) and said that was the bill now, creating either 250 megawatts from new generation or purchase up to 120 megawatts from qualifying facilities, with the new generation facility to be completed by July 1, 2003.

Vote: Motion carried 6-0.

Motion/Vote: **SEN. MCNUTT** moved that **HB 474 BE CONCURRED IN AS AMENDED**. Motion carried 6-0.

Note: A combined set of amendments, #HB047403.ate, **EXHIBIT (ens80a07)**, was submitted the following day.

ADJOURNMENT

Adjournment: 2:30 P.M.

SEN. MACK COLE, Chairman

MARION MOOD, Secretary

MC/MM

EXHIBIT (ens80aad)